

# **ARIZONA DEPARTMENT OF HEALTH SERVICES NATIONAL INTEREST WAIVER GUIDELINES**

## **INTRODUCTION**

The federal National Interest Waiver (NIW) program allows certain foreign workers with advanced degrees, including foreign physicians (MDs), or exceptional abilities to work in the United States. A national interest waiver granted to a foreign physician by the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security exempts the foreign physician from the labor certification process administered by the U.S. Department of Labor.

Under the federal NIW program, a state health department may support with an attestation letter a request for a national interest waiver for a foreign physician. The foreign physician must agree to provide primary care services full time in a federally designated primary health professional shortage area (HPSA), medically underserved area (MUA), medically underserved population (MUP), or mental health professional shortage area (MHPSA) for an aggregate of five years.

A state public health department's participation in the NIW program is discretionary. The Arizona Department of Health Services (ADHS) has determined that participation in the NIW program will promote the effective use of health manpower and facilities in this state as required by A.R.S. § 36-104(16). The ADHS' participation in the NIW program will increase access to health care for the underserved residents of this state.

The ADHS will only consider requests from foreign physicians who have obtained J-1 visa waivers from the USCIS based on ADHS letters of support for primary care physicians. For an ADHS NIW attestation letter, a foreign physician must have practiced as a J-1 provider on an **outpatient** and full time basis, for at least one year immediately preceding the date of the request for an attestation letter, at a qualifying service site or in a community located within a federally designated **rural** HPSA, MUA, MUP, or MHPSA. This one-year requirement promotes physician retention in the federally designated area.

Foreign physicians who obtain a national interest waiver from the USCIS based on an ADHS NIW attestation letter must serve the uninsured and under-insured, regardless of ability to pay; must accept Medicaid (AHCCCS) and Medicare assignment; and must use a sliding fee schedule.

## **GUIDELINES**

The USCIS, successor to the Immigration and Naturalization Service of the U.S. Department of Justice, is the federal agency that grants national interest waivers.

Under federal statutes and regulations on national interest waivers, a foreign physician must obtain either: the support of a federal agency, such as the U.S. Department of Veterans Affairs, that has knowledge of the physician's qualifications; or a letter from a

state's department of public health attesting that the physician's work at the designated site or designated sites is in the public interest.

The federal national interest waiver regulations currently cover only primary care medical specialties: the practice of family or general medicine, pediatrics, general internal medicine, obstetrics and gynecology, and psychiatry. A national interest waiver is available to foreign physicians only to practice a primary care specialty in federally designated shortage areas.

The ADHS will provide NIW attestation letters **only** to foreign physicians who have obtained a J-1 visa waiver based on an ADHS J-1 visa waiver letters of support for primary care physicians. As J-1 providers, the foreign physicians also must have practiced a primary care specialty on an **outpatient** and full-time basis at a qualifying service site or in a community located within a federally designated **rural** HPSA, MUA, MUP, or MHPSA, for at least one year immediately preceding the request for an ADHS NIW attestation letter.

A foreign physician with a national interest waiver based on an ADHS NIW attestation letter must complete an aggregate of at least five years of medical service. The five-year period is counted from the date a foreign physician begins practicing in a federally designated shortage area under a J-1 visa waiver based on an ADHS letter of support, after receiving an H1B visa.

The ADHS' review of a request for a NIW attestation letter is at the ADHS' **discretion**, and any and all ADHS employees, agents and assigns will be held harmless in the event a decision is made not to grant the request or from any action or lack of action made in connection with this request.

### **ELIGIBILITY**

The ADHS will consider for a NIW attestation letter only foreign physicians who have obtained a J-1 visa waiver from the USCIS based on an ADHS J-1 visa waiver letter of support for primary care physicians. As J-1 providers, the foreign physicians must also have practiced a primary care specialty on a **outpatient** and full time basis at a qualifying service site or in a community located within a federally designated **rural** HPSA, MUA, MUP, or MHPSA for at least one year immediately preceding the request for an ADHS NIW attestation letter.

To be considered for an ADHS NIW attestation letter, a foreign physician's J-1 visa waiver file must be complete at the time of the request for an ADHS NIW attestation letter. The foreign physician must be in compliance with all the ADHS J-1 Visa Waiver Program's requirements, including submission of copies of the physician's J-1 visa waiver issued by the USCIS, valid employment authorization document (EAD) or H1B visa, and Arizona medical license. In addition, the service site must be in compliance with all the ADHS J-1 Visa Waiver Program's requirements.

The ADHS will issue a NIW attestation letter **only** for foreign primary care physicians who meet all of the following requirements:

- Received a J-1 visa waiver based on ADHS J-1 visa waiver letter of support for primary care physicians.
- Complied with the ADHS J-1 Visa Waiver Program's policies.
- Practiced a primary care specialty on an **outpatient** and full time basis at a qualifying service site or in a community located within a federally designated rural HPSA, MUA, MUP, or MHPSA for at least one year immediately preceding the request for an ADHS NIW attestation letter.
- Will continue to practice a primary care specialty on an **outpatient** and full time basis at a qualifying service site or in a community located within a federally designated **rural** HPSA, MUA, MUP, or MHPSA.
- Will complete an aggregate of at least five years of medical service, including the period of practice, after the issuance of an H1B visa, under a J-1 visa waiver based on an ADHS J-1 visa waiver letter of support.

### **NON-ELIGIBILITY**

The ADHS NIW Program **will not** issue NIW attestation letters for foreign physicians in research positions or who will practice in long-term care, chronic care, inpatient care, or rehabilitation facilities. The ADHS **will not** issue NIW attestation letters for foreign physicians who were issued ADHS J-1 visa waiver letters of support for specialists.

The documentation submitted for an ADHS J-1 visa waiver letter of support is site specific. The ADHS **will not** issue a NIW attestation letter when circumstances indicate that a foreign physician with a J-1 visa waiver based on an ADHS J-1 visa waiver letter of support transferred to a site other than the original placement **without prior notification to the ADHS**.

The ADHS will review Arizona Medical Board records and ADHS records for each foreign physician meeting the NIW eligibility requirements listed in the preceding section entitled "Eligibility." At its discretion, the ADHS may determine that it is not in the public interest to issue a NIW attestation letter for a foreign physician who has been the subject of a complaint made to the Arizona Medical Board or to the ADHS.

At its discretion, the ADHS may determine that it is not in the public interest to issue a NIW attestation letter for a foreign physician practicing at a service site that is not in compliance with the ADHS J-1 Visa Waiver Program's policies or that has been the subject of a complaint made to the ADHS or to other regulatory agencies.

### **COMPLIANCE**

Foreign physicians with a national interest waiver based on an ADHS NIW attestation letter must practice a primary care specialty on a sliding-fee-schedule basis, an **outpatient** basis, and a full time basis at a qualifying service site or in community located within a federally designated **rural** HPSA, MUA, MUP, or MHPSA.

A foreign physician with a national interest waiver based on an ADHS NIW attestation letter must complete an aggregate of at least five years of medical service. The five-year

period is counted from the date a foreign physician begins practicing in a federally designated shortage area under a J-1 visa waiver based on an ADHS letter of support, after receiving an H1B visa.

If a foreign physician obtains a national interest waiver from the USCIS based on an ADHS NIW attestation letter, the ADHS must receive documentation of the national interest waiver within seven business days after the physician receives the national interest waiver.

For the NIW packet, the ADHS requires notarized documents establishing that the foreign physician is practicing and will continue to practice a primary care specialty **outpatient** and full time basis at a qualifying service site or in a community located in a **rural** HPSA, MUA, MUP, or MHPSA.

After a foreign physician obtains a national interest waiver based on an ADHS NIW attestation letter, the ADHS must receive each calendar quarter a **notarized** encounter report for the foreign physician. This report will confirm the service site described in the preceding paragraph. The encounter report will also confirm sliding fee schedule use for the foreign physician's patients. If the foreign physician does not submit a quarterly encounter report by the last day of the month after the end of a calendar quarter (for example, by April 30 for the quarter ending March 31), then the service site where the physician practices is responsible for submitting the encounter report within 20 business days after the deadline.

For review and approval, the ADHS must annually receive the current sliding fee schedule and the procedure for its use at the service site of a foreign physician with a national interest waiver based on an ADHS NIW attestation letter. The sliding fee schedule must be site specific and based on current Federal Poverty Guidelines.

### **AUTHORITY**

8 USC 1153(b)(2)(B)(ii); 8 CFR 204.12; A.R.S. § 36-104(16)

### **APPLICABILITY**

These guidelines apply to all foreign physicians requesting an ADHS NIW attestation letter, to foreign physicians who obtain a national interest waiver based on an ADHS NIW attestation letter, and to employers of these foreign physicians.

### **DEFINITIONS**

1. "ADHS" means the Arizona Department of Health Services.
2. "Correctional facility" means any place used for the confinement or control of a person:
  - (a) Charged with or convicted of an offense; or
  - (b) Held for extradition; or

(c) Pursuant to an order of court for law enforcement purposes. A.R.S. § 13-2501

3. "Detention facility" means:

- (a). A juvenile facility under:
  - i. A county board of supervisors, or
  - ii. A county jail district authorized by A.R.S. Title 48, Chapter 25;
- (b). A juvenile secure care facility under the Department of Juvenile Corrections; or
- (c). A facility for individuals who are not U.S. citizens and who are in the custody of the U.S. Immigration and Customs Enforcement of the Department of Homeland Security.

4. "Encounter report" means a completed and notarized report, on a form provided by the ADHS, including the number of patients seen using an ADHS-approved sliding fee schedule.

5. "Federal Poverty Guidelines" means the most recent annual update of the U.S. Department of Health and Human Services' (DHHS) Poverty Guidelines published in the Federal Register.

6. "Foreign physician" means an individual who:

- (a). Is not a U.S. citizen or lawful permanent resident, and
- (b). Is a medical school graduate.

7. "FQHC" means a federally qualified health center designated by the DHHS under 42 USC 1395x(aa)(4)(A).

8. "FQHC look-alike" means a federally qualified health center look-alike designated by the DHHS under 42 USC 1395x(aa)(4)(B).

9. "Full time" means at least 40 hours per week.

10. "HPSA" means health professional shortage area, a service area designated by the DHHS as having insufficient primary care providers.

11. "Inpatient services" means hospital services provided to an individual who is expected to receive the services for 24 consecutive hours or more.

12. "J-1 visa waiver" means a waiver of the two-year foreign residence requirement applicable to foreign medical graduates with a J-1 visa.

13. "MUA" means a medically underserved area designated by the DHHS.

14. "MUP" means a medically underserved population designated by the DHHS.
15. "National interest waiver" means a foreign worker's exemption from the labor certification requirement administered by the U.S. Department of Labor.
16. "Primary care physician" means a physician who:
  - (a). Practices a primary care specialty;
  - (b). Is frequently a patient's first point of contact with the health care system, except for emergencies; and
  - (c). Provides prevention, health promotion and education, identification of individuals at special risk, early detection of disease, treatment of illness and injury, and referral to specialists when appropriate.
17. "Primary care specialty" means:
  - (a). Family practice,
  - (b). General practice,
  - (c). Internal medicine,
  - (d). Obstetrics and gynecology,
  - (e). Pediatrics, or
  - (f). Psychiatry.
18. "Qualifying service site" means a FQHC, FQHC Look-Alike, RHC, Arizona Primary Care Clinic, or correctional or detention facility that is federally designated as having a health manpower shortage or that is located in a HPSA, MUA, MUP, or MHPSA.
19. "RHC" means rural health clinic designated by the DHHS under 42 USC 1395x(aa)(2).
20. "Rural" means either:
  - (a). A county with a population of less than four hundred thousand persons according to the most recent United States decennial census.
  - (b). A census county division with less than fifty thousand persons in a county with a population of four hundred thousand or more persons according to the most recent United States decennial census. A.R.S. § 36-2171.
21. "Sliding-fee schedule" means a document stating the percentage of the cost of medical services, based on the current Federal Poverty Guidelines, charged to an uninsured individual with a gross family income less than or equal to 200 percent of the applicable federal poverty guideline.

## **DIVISION PRIMARY POSITION OF RESPONSIBILITY**

Division of Public Health Services/Office of Health Systems Development

### **PROCEDURE**

The foreign physician must submit the following to the ADHS Division of Public Health Services/Office of Health Systems Development:

1. National Interest Waiver request form.
2. A letter from the physician asking the ADHS to act as an interested government agency and to recommend a national interest waiver for the physician. The letter must state that the physician's work is in the public interest and must describe the physician's education, training, and work experience that substantiates the claim. The letter also must include a description of the physician's work schedule and responsibilities.
3. If the physician will be an employee, a full-time employment contract for the required period of clinical medical practice. The contract must meet the requirements of the J-1 Visa Waiver Program. If the physician will be self-employed, the physician must submit a copy of the lease agreement or purchase agreement for the premises where the physician will practice or other documentation establishing the location where the physician will practice.
4. A **NOTARIZED STATEMENT OF UNDERSTANDING AND AGREEMENT**, stating that the physician has practiced **outpatient** primary care (family or general practice, pediatrics, internal medicine, obstetrics and gynecology, or mental psychiatry), on a full-time basis (at least 40 hours per week) for at least one year immediately preceding the date of the request for an ADHS NIW attestation letter and will continue to do while practicing under a national interest waiver based on an ADHS NIW attestation letter. The notarized statement of understanding and agreement must state that, as a J-1 provider, the physician has practiced for at least one year immediately preceding the date of the request for an ADHS NIW attestation letter at a qualifying Federally Qualified Health Center (FQHC), qualifying FQHC Look-Alike, qualifying Rural Health Clinic, qualifying Arizona Primary Care Program Clinic, qualifying correction or detention facility, or in a community located within a federally designated **rural** HPSA, MUA, MUP, or MHPSA and will continue to do so while practicing under a national interest waiver based on an ADHS NIW attestation letter. The notarized statement of understanding and agreement must state that the physician will complete an aggregate of at least five years of medical service to satisfy the national interest waiver obligation. Lastly, the notarized statement of understanding and agreement must state that everybody is seen regardless of ability to pay and indicate that a sliding fee schedule (SFS) is in place and the procedure for its utilization. The sliding discount-to-fee schedule should be based on the current Federal Poverty Guidelines; <http://aspe.hhs.gov/poverty/05poverty.shtml>.
5. The current SFS and the procedure for its use at the site. Each year during the physician's practice under a national interest waiver based on an ADHS NIW attestation letter, the site's SFS must be submitted to the ADHS for review and approval.
6. A **NOTARIZED CERTIFICATION OF SERVICE SITE**

7. A **notarized** quarterly encounter report on the Encounter Report Form provided by the ADHS for each calendar quarter during the physician's practice under a national interest waiver based on an ADHS NIW attestation letter.
8. If the physician obtains a national interest waiver based on an ADHS NIW attestation letter, the physician must notify the ADHS and complete a Transfer Request form before transferring to another location

If the physician fails to comply with the terms of the Agreement, the ADHS will notify the USCIS. Additionally, any and all other measures available to the ADHS will be taken in the event of non-compliance.

Upon receipt of a complete NIW packet, the ADHS will review the documentation. If the ADHS determines that the physician's practice meets all the ADHS NIW Program's requirements and is in the public interest, an attestation letter will be forwarded to the ADHS Office of the Director for signature. When signed, the letter will be mailed to the physician or to the attorney representing the physician, who will be responsible for mailing the letter to the USCIS.



**NOTARIZED STATEMENT OF UNDERSTANDING AND AGREEMENT OF  
PHYSICIAN**

I, \_\_\_\_\_ having been duly sworn, state that I:

1. Have provided, as a J-1 provider, **outpatient** primary care (family or general practice, pediatrics, internal medicine, obstetrics and gynecology, or psychiatry), on a full-time basis (at least 40 hours per week) for at least one year immediately preceding the date of the request for an ADHS NIW attestation letter and will continue to do so while practicing under a national interest waiver based on an ADHS NIW attestation letter. As a J-1 provider, I have practiced for at least one year immediately preceding the date of the request for an ADHS NIW attestation letter at a qualifying Federally Qualified Health Center (FQHC), qualifying FQHC Look-Alike, qualifying Rural Health Clinic, qualifying Arizona Primary Care Program Clinic, qualifying correction or detention facility, or in a community located within a federally designated **rural** HPSA, MUA, MUP, or MHPSA, and will continue to do so while practicing under a national interest waiver based on an ADHS NIW attestation letter. I will complete an aggregate of at least five years of medical service to satisfy the national interest waiver obligation.
2. Will be an AHCCCS (Arizona Medicaid) registered provider, accept all patients regardless of method of payment or ability to pay, provide services to those who have no health insurance coverage, will charge patients at the usual and prevailing rates in the area where I am practicing, and will have a sliding fee schedule based on ability to pay in place for all patients of the facility.
3. Will submit to the ADHS for review and approval a current sliding fee schedule and the procedure for its use at the site each year during my obligation under a national interest waiver. The sliding fee schedule will be based on the current Federal Poverty Guidelines as published in the Federal Register. Notice of the availability of this sliding fee schedule will be posted in a conspicuous location in the patient waiting area of the service site/facility or office where I am practicing.
4. Will submit for each calendar quarter a **notarized** encounter report, on an Encounter Report Form provided by the ADHS, by the last day of the month after the end of a calendar quarter. The report will include the total number of encounters and the numbers of encounters using the sliding fee schedule.
5. Will notify the ADHS and complete a Transfer Request form before transferring to another location.

If I fail to comply with the terms of this Agreement, I understand that the ADHS will notify the U.S. Citizenship and Immigration Services of the Department of Homeland Security. Additionally, I understand that any and all other measures available to the ADHS will be taken in the event of my non-compliance.

\_\_\_\_\_  
Signature of foreign physician

\_\_\_\_\_  
Date

State of Arizona \_\_\_\_\_)

County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,

by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **NOTARIZED CERTIFICATION OF SERVICE SITE**

I, \_\_\_\_\_ having been duly sworn, state that this service site:

1. Has the financial means available to support the physician  
\_\_\_\_\_ seeking a national interest waiver.
2. Will employ the physician to provide full-time (at least 40 hours per week) **outpatient** primary care (family or general practice, pediatrics, internal medicine, obstetrics and gynecology, or psychiatry) at a qualifying Federally Qualified Health Center (FQHC), qualifying FQHC Look-Alikes, qualifying Rural Health Clinic, qualifying Arizona Primary Care Program Clinic, qualifying correction or detention facility, or in a community located within a federally designated **rural** HPSA, MUA, MUP, or MHPSA.
3. Will accept walk-in patients.
4. Is not an appointment-only practice.
5. Will accept all patients regardless of method of payment or ability to pay; will provide services to those who have no health insurance coverage; will accept AHCCCS, Medicare/Medicaid, and SCHIP assignments; and will charge patients at the usual and prevailing rates in the area where the practice is located.
6. Will have a sliding fee schedule based on the current Federal Poverty Guidelines that will be used based on patient's ability to pay,
7. Will submit for ADHS review and approval a current sliding fee schedule and the procedure for its use at the site for each year of the physician's obligation under a national interest waiver based on an ADHS NIW attestation letter.

\*\*\*\*\***Attach a copy of the sliding fee schedule and the office procedure for its use.**\*\*\*\*\*

8. Will submit a **notarized** quarterly encounter report, on an Encounter Report Form provided by the ADHS, for each calendar quarter by the last day of the month after the end of a calendar quarter. The report will include the total number of encounters and the numbers of encounters using the sliding fee schedule.
9. Will notify the ADHS and complete a Transfer Request form before transferring the physician to another location

\_\_\_\_\_  
(Signature of Service Site's Executive Director/Administrator or Authorized Signer) (Date)

State of Arizona \_\_\_\_\_)

County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_